

# HOUSE BILL No. 1356

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 16-19; IC 34-30-2-64.5; IC 35-48-4.

**Synopsis:** Medical cannabis. Defines "qualifying patient", and permits a qualifying patient to use medical cannabis under certain circumstances. Requires the state department of health to adopt rules before July 1, 2018, concerning the use, distribution, cultivation, production, and testing of medical cannabis. Provides limited reciprocity for holders of nonresident medical cannabis cards. Provides immunity from civil and criminal liability for physicians who recommend the medical use of cannabis. Provides a defense to: (1) arrest; and (2) criminal prosecution; for marijuana possession and use in certain circumstances. Makes conforming amendments.

**Effective:** July 1, 2017.

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## Errington

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January 12, 2017, read first time and referred to Committee on Public Policy.

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First Regular Session of the 120th General Assembly (2017)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2016 Regular Session of the General Assembly.

## HOUSE BILL No. 1356

A BILL FOR AN ACT to amend the Indiana Code concerning health.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 16-19-3-32 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2017]: **Sec. 32. (a) The following definitions apply throughout**  
4 **this section:**

5       **(1) "Bona fide medical physician-patient relationship" means**  
6 **a relationship between a physician and a patient that includes**  
7 **an:**

8       **(A) annual physical examination and review of medical**  
9 **history or a referral from a primary care practitioner;**

10       **(B) explanation of the benefits and risks of medical use of**  
11 **cannabis; and**

12       **(C) expectation of ongoing care.**

13       **(2) "Cannabis" means any part of the plant genus cannabis,**  
14 **including the seeds, the resin extracted from any part of the**  
15 **plant, and any compound, manufacture, salt, derivative,**  
16 **mixture, or preparation of the plant, its seeds, or its resin.**

17       **(3) "Cannabis derived product" means a product other than**



whole plant cannabis that is manufactured from cannabis and is intended for use or consumption by humans through means including food stuffs, extracts, oils, tinctures, topicals, and suppositories.

(4) "Dispensing facility" means a person or organization that:

(A) holds a valid medical cannabis production license; and  
(B) acquires and possesses cannabis and cannabis derived products for the purpose of sales, delivery, transport, transfer, and distribution to:

- (i) cardholding qualifying patients;
- (ii) cardholding personal caregivers;
- (iii) other dispensing facilities; and
- (iv) independent testing laboratories.

(5) "Independent testing laboratory" means a private and independent testing facility that:

(A) holds a valid medical cannabis production license; and  
(B) tests cannabis or cannabis derived products to be sold by a medical cannabis establishment to identify the content of the cannabis or cannabis derived products, including constitutive elements such as cannabinoids, to detect the presence of any pesticides, bacteria, or other contaminants, and for other purposes determined by the state department.

(6) "Manufacturing facility" means a person or organization that:

(A) holds a valid medical cannabis production license; and  
(B) acquires, possesses, manufactures, and packages cannabis derived products for the purpose of delivery, transfer, transport, supply, or sale to:

- (i) dispensing facilities;
- (ii) other manufacturing facilities;
- (iii) processing facilities; or
- (iv) independent testing laboratories.

(7) "Medical cannabis agent" means an employee, staff volunteer, officer, or board member of a medical cannabis establishment.

(8) "Medical cannabis establishment" means a person, organization, or company in possession of a valid medical cannabis production license for the dispensing of medical cannabis.

(9) "Medical cannabis production license" means a license issued by the state department:



(A) authorizing the commercial cultivation of medical cannabis by a person, organization, or company that operates a medical cannabis establishment; and

(B) allowing the person, organization, or company to:

(i) cultivate;

(ii) process;

(iii) manufacture; or

(iv) test;

medical cannabis.

(10) "Medical cannabis program license" means a license issued by the state department authorizing a qualifying patient or a personal caregiver to acquire, possess, use, and deliver cannabis for the medical benefit of a qualifying patient.

(11) "Medical use of cannabis" means the acquisition, cultivation, possession, processing, manufacturing, transfer, transportation, sale, distribution, dispensing, or administration of cannabis or cannabis derived products for the benefit of qualifying patients.

(12) "Nonresident card" means a card or other identification that:

(A) is issued by another jurisdiction; and

(B) is substantially similar to a medical cannabis program license.

(13) "Patient cardholder" means a person holding a valid medical cannabis program license.

(14) "Personal caregiver" means an individual who has agreed to assist with the medical use of cannabis by a qualifying patient holding an unexpired medical cannabis program license.

(15) "Physician" means an individual holding an unlimited license to practice medicine under IC 25-22.5.

(16) "Processing facility" means a business that:

(A) holds a medical cannabis production license; and

(B) acquires, possesses, trims, inspects, or grades cannabis, or places cannabis in bulk storage or retail containers for the purpose of delivery, transfer, transport, supply, or sales to:

(i) a dispensing facility;

(ii) a manufacturing facility;

(iii) another processing facility; or

(iv) an independent testing laboratory.



1 (17) "Producer cardholder" means a person holding a valid  
 2 medical cannabis production license.

3 (18) "Qualifying medical condition" means:

4 (A) cancer;

5 (B) glaucoma;

6 (C) positive status for human immunodeficiency virus;

7 (D) acquired immune deficiency syndrome;

8 (E) hepatitis C;

9 (F) amyotrophic lateral sclerosis;

10 (G) Crohn's disease;

11 (H) Alzheimer's disease;

12 (I) nail-patella;

13 (J) multiple sclerosis;

14 (K) injury or disease to the spinal cord, spinal column, or  
 15 vertebra;

16 (L) myelomalacia;

17 (M) celiac disease;

18 (N) sickle cell anemia;

19 (O) a chronic or debilitating disease or medical condition  
 20 or the treatment of a chronic or debilitating disease or  
 21 medical condition that produces:

22 (i) cachexia or wasting syndrome;

23 (ii) severe or chronic pain;

24 (iii) severe or chronic nausea;

25 (iv) seizures, including seizures that are characteristic of  
 26 epilepsy; or

27 (v) severe or persistent muscle spasms;

28 (P) posttraumatic stress disorder; or

29 (Q) any other disease, condition, or symptom that the state  
 30 department determines by its rulemaking authority under  
 31 IC 4-22-2 is a debilitating medical condition.

32 (19) "Qualifying patient" means an individual who:

33 (A) has a written recommendation from a physician for the  
 34 medical use of cannabis; and

35 (B) holds an unexpired medical cannabis program license.

36 (20) "Restricted access area" means a location, not visible  
 37 from a public right-of-way, where cannabis is cultivated or  
 38 stored. The term includes an open field, a greenhouse, in row  
 39 cover, or a structure that secures the cannabis from access by  
 40 unauthorized persons. The term includes a personal garden if  
 41 measures are taken to prohibit access by unauthorized  
 42 persons.



(21) "Visiting qualifying patient" means the holder of a valid nonresident card.

(22) "Written recommendation" means a document authorizing a qualifying patient's medical use of cannabis that:

(A) is written on tamper resistant paper;

(B) is signed by a physician;

(C) is made only in the course of a bona fide medical physician-patient relationship; and

(D) includes the qualifying medical condition.

(b) Before July 1, 2018, the state department shall adopt rules under IC 4-22-2 to do the following:

(1) Determine who may serve as a personal caregiver for a qualifying patient. A personal caregiver may include:

(A) a health care provider; and

(B) an individual who is providing care to a qualifying patient.

(2) Provide for the issuance of a:

(A) medical cannabis program license to a qualifying patient or a personal caregiver; and

(B) medical cannabis production license to a medical cannabis agent and a medical cannabis establishment.

(c) Before July 1, 2018, the state department shall adopt rules under IC 4-22-2 to establish an application process and a procedure for the issuance of a medical cannabis production license to an independent testing laboratory. The state department may issue a license under this subsection only if the independent testing laboratory is capable of accurately determining the following:

(1) The concentration of tetrahydrocannabinol (THC) in a sample.

(2) The presence and identification of mold or fungus in a sample.

(3) The presence and concentration of pesticide and fertilizer in a sample.

(d) Before July 1, 2018, the state department shall adopt rules under IC 4-22-2 to establish an application process and procedure for the issuance of a medical cannabis production license to a qualifying patient or a personal caregiver for the cultivation of cannabis for personal use. Rules adopted under this subsection must:

(1) permit not more than two (2) qualifying patients and



1       personal caregivers to jointly cultivate cannabis for the  
2       personal use of one (1) or more qualifying patients;

3       (2) limit the amount of cannabis that may be cultivated to not  
4       more than a ninety (90) day supply for each qualifying  
5       patient; and

6       (3) require that cultivation and storage of cannabis be  
7       conducted in a restricted access area.

8       (e) Before July 1, 2018, the state department shall adopt rules  
9       under IC 4-22-2 to establish an application process and procedure  
10      for the issuance of a medical cannabis production license to a  
11      medical cannabis agent. Rules adopted under this subsection must  
12      require that a medical cannabis establishment notify the state  
13      department not later than three (3) business days after a medical  
14      cannabis agent ceases to be associated with the medical cannabis  
15      establishment.

16      (f) Before July 1, 2018, the state department shall adopt rules  
17      under IC 4-22-2 to establish an application process and procedure  
18      for the issuance of a medical cannabis production license to a  
19      medical cannabis establishment. Rules adopted under this  
20      subsection:

21          (1) may require a medical cannabis establishment to pay a  
22          reasonable application and licensing fee;

23          (2) must require that the state department oversee and inspect  
24          a medical cannabis establishment at regular intervals;

25          (3) must prohibit an individual who serves or served as a  
26          principal officer or board member of a medical cannabis  
27          establishment from concurrently serving as a principal officer  
28          or board member of another medical cannabis establishment;  
29          and

30          (4) may limit the total number of medical cannabis  
31          establishments in:

32              (A) Indiana; and

33              (B) any one (1) county.

34      (g) Before July 1, 2018, the state department shall adopt rules  
35      under IC 4-22-2 to establish a procedure to revoke, for good cause  
36      shown, a license issued under this section. Rules adopted under this  
37      subsection:

38          (1) must provide a patient cardholder and a producer  
39          cardholder with notice and an opportunity to be heard before  
40          the state board before permanent license revocation;

41          (2) may provide for license suspension for a limited time on an  
42          emergency ex parte basis; and



(3) may authorize the use of sanctions short of revocation (including temporary suspension or a probationary period) for a minor or technical violation of this chapter or the rules adopted under this chapter.

(h) Before July 1, 2018, the state department shall adopt rules under IC 4-22-2 concerning:

(1) product safety standards for the:

(A) cultivation;

(B) processing;

(C) manufacturing;

(D) labeling;

(E) testing; and

(F) distribution;

of cannabis; and

(2) oversight and enforcement of product safety standards adopted under this subsection.

Rules adopted under this subsection may be based on the cannabis standards adopted by the American Herbal Products Association.

(i) A visiting qualifying patient shall receive limited reciprocity while in Indiana. In order to receive limited reciprocity, the visiting qualifying patient must:

(1) not be a resident of Indiana or have resided in Indiana for a period greater than thirty (30) days;

(2) be diagnosed with a qualifying medical condition listed under subsection (a)(18); and

(3) possess a valid and unexpired nonresident card.

A valid and unexpired nonresident card has the same force and effect as a medical cannabis program license issued in Indiana, except that the visiting qualifying patient may not purchase medical cannabis in Indiana.

(j) Before July 1, 2018, the state department shall adopt rules under IC 4-22-2 concerning the issuance of a medical cannabis program license to the holder of a valid and unexpired nonresident card.

(k) The state department may establish and collect reasonable fees for the application and issuance of a license under this section. The state department may establish a fee for each type of license. A fee may not exceed the cost of services provided, including the costs of oversight, inspection, and enforcement.

(l) Identifying information relating to a qualifying patient or a personal caregiver (including an individual who seeks to be recognized as a qualifying patient or a personal caregiver) is





1 **confidential.**

2 **(m) A physician is immune from civil and criminal liability for:**

3 **(1) advising a qualifying patient about the risks and benefits**  
 4 **of the medical use of cannabis; and**

5 **(2) providing a qualifying patient with a written**  
 6 **recommendation based upon a full assessment of the**  
 7 **qualifying patient's medical history and condition.**

8 **However, the immunity described in this subsection does not apply**  
 9 **to a physician who commits gross negligence or engages in willful**  
 10 **or wanton misconduct.**

11 **(n) The medical licensing board may not take any action against**  
 12 **a physician who is immune under subsection (m) for performing an**  
 13 **act described in subsection (m)(1) or (m)(2).**

14 **(o) Unless required by federal law or to obtain federal funding,**  
 15 **a person may not discriminate in employment or housing based**  
 16 **solely on an individual's:**

17 **(1) status as a patient cardholder; or**

18 **(2) positive test for use of cannabis if the individual is a**  
 19 **patient cardholder.**

20 **However, this subsection does not prevent an employer from**  
 21 **taking an adverse employment action against an employee who is**  
 22 **impaired by the use of cannabis while on the employer's premises**  
 23 **or while carrying out the employee's duties.**

24 **SECTION 2. IC 16-19-5-1 IS AMENDED TO READ AS**  
 25 **FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 1. (a) In addition to**  
 26 **other fees provided by this title, the state department may establish and**  
 27 **collect reasonable fees for specific services described under subsection**  
 28 **(b) provided by the state department. The fees may not exceed the cost**  
 29 **of services provided.**

30 **(b) Fees may be charged for the following services:**

31 **(1) Plan reviews conducted under rules adopted under**  
 32 **IC 16-19-3-4(b)(13).**

33 **(2) Licensing of agricultural labor camps under IC 16-41-26.**

34 **(3) Services provided to persons other than governmental entities**  
 35 **under rules adopted under IC 16-19-3-5.**

36 **(4) Services provided by the state health laboratory under**  
 37 **IC 16-19-8.**

38 **(5) Services provided under IC 16-19-11-3.**

39 **(6) Services provided under IC 24-6 by the state metrology**  
 40 **laboratory.**

41 **(7) Licensing under IC 16-19-3-32.**

42 **SECTION 3. IC 34-30-2-64.5 IS ADDED TO THE INDIANA**



CODE AS A NEW SECTION TO READ AS FOLLOWS  
[EFFECTIVE JULY 1, 2017]: **Sec. 64.5. IC 16-19-3-32 (Concerning a physician and medical cannabis).**

SECTION 4. IC 35-48-4-8.3, AS AMENDED BY P.L.187-2015, SECTION 49, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 8.3. (a) This section does not apply to a rolling paper.

(b) A person who knowingly or intentionally possesses **a raw material**, an instrument, a device, or another object that the person intends to use for:

- (1) introducing into the person's body a controlled substance;
- (2) testing the strength, effectiveness, or purity of a controlled substance; or
- (3) enhancing the effect of a controlled substance;

commits a Class C misdemeanor. However, the offense is a Class A misdemeanor if the person has a prior unrelated judgment or conviction under this section.

**(c) It is a defense to an action, arrest, or prosecution under this section that:**

**(1) the person who possesses the raw material, instrument, device, or another object is:**

**(A) the owner or agent of a dispensing facility as defined under IC 16-19-3-32(a)(4);**

**(B) the owner or agent of an independent testing laboratory as defined under IC 16-19-3-32(a)(5);**

**(C) the owner or agent of a manufacturing facility as defined under IC 16-19-3-32(a)(6);**

**(D) a medical cannabis agent as defined under IC 16-19-3-32(a)(7);**

**(E) the owner or agent of a medical cannabis establishment as defined under IC 16-19-3-32(a)(8); or**

**(F) a patient cardholder as defined in IC 16-19-3-32(a)(13);**  
**and**

**(2) the raw material, instrument, device, or another object is for a purpose authorized by the person's license issued under IC 16-19-3-32.**

SECTION 5. IC 35-48-4-10, AS AMENDED BY P.L.44-2016, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 10. (a) A person who:

- (1) knowingly or intentionally:
  - (A) manufactures;
  - (B) finances the manufacture of;



- 1 (C) delivers; or
- 2 (D) finances the delivery of;
- 3 marijuana, hash oil, hashish, or salvia, pure or adulterated; or
- 4 (2) possesses, with intent to:
- 5 (A) manufacture;
- 6 (B) finance the manufacture of;
- 7 (C) deliver; or
- 8 (D) finance the delivery of;
- 9 marijuana, hash oil, hashish, or salvia, pure or adulterated;
- 10 commits dealing in marijuana, hash oil, hashish, or salvia, a Class A
- 11 misdemeanor, except as provided in subsections (b) through (d).
- 12 (b) A person may be convicted of an offense under subsection (a)(2)
- 13 only if:
- 14 (1) there is evidence in addition to the weight of the drug that the
- 15 person intended to manufacture, finance the manufacture of,
- 16 deliver, or finance the delivery of the drug; or
- 17 (2) the amount of the drug involved is at least:
- 18 (A) ten (10) pounds, if the drug is marijuana; or
- 19 (B) three hundred (300) grams, if the drug is hash oil, hashish,
- 20 or salvia.
- 21 (c) The offense is a Level 6 felony if:
- 22 (1) the person has a prior conviction for a drug offense and the
- 23 amount of the drug involved is:
- 24 (A) less than thirty (30) grams of marijuana; or
- 25 (B) less than five (5) grams of hash oil, hashish, or salvia; or
- 26 (2) the amount of the drug involved is:
- 27 (A) at least thirty (30) grams but less than ten (10) pounds of
- 28 marijuana; or
- 29 (B) at least five (5) grams but less than three hundred (300)
- 30 grams of hash oil, hashish, or salvia.
- 31 (d) The offense is a Level 5 felony if:
- 32 (1) the person has a prior conviction for a drug dealing offense
- 33 and the amount of the drug involved is:
- 34 (A) at least thirty (30) grams but less than ten (10) pounds of
- 35 marijuana; or
- 36 (B) at least five (5) grams but less than three hundred (300)
- 37 grams of hash oil, hashish, or salvia; or
- 38 (2) the:
- 39 (A) amount of the drug involved is:
- 40 (i) at least ten (10) pounds of marijuana; or
- 41 (ii) at least three hundred (300) grams of hash oil, hashish,
- 42 or salvia; or



(B) offense involved a sale to a minor.

**(e) It is a defense to a prosecution under this section for an offense involving marijuana, hash oil, or hashish that:**

**(1) the person is:**

**(A) the owner or agent of a dispensing facility as defined under IC 16-19-3-32(a)(4);**

**(B) the owner or agent of an independent testing laboratory as defined under IC 16-19-3-32(a)(5);**

**(C) the owner or agent of a manufacturing facility as defined under IC 16-19-3-32(a)(6);**

**(D) a medical cannabis agent as defined under IC 16-19-3-32(a)(7);**

**(E) the owner or agent of a medical cannabis establishment as defined under IC 16-19-3-32(a)(8); or**

**(F) a patient cardholder as defined under IC 16-19-3-32(a)(13); and**

**(2) the conduct involving the marijuana, hash oil, or hashish is authorized by the person's license issued under IC 16-19-3-32.**

SECTION 6. IC 35-48-4-11, AS AMENDED BY P.L.226-2014(ts), SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 11. (a) A person who:

(1) knowingly or intentionally possesses (pure or adulterated) marijuana, hash oil, hashish, or salvia;

(2) knowingly or intentionally grows or cultivates marijuana; or

(3) knowing that marijuana is growing on the person's premises, fails to destroy the marijuana plants;

commits possession of marijuana, hash oil, hashish, or salvia, a Class B misdemeanor, except as provided in subsections (b) through (c).

(b) The offense described in subsection (a) is a Class A misdemeanor if the person has a prior conviction for a drug offense.

(c) The offense described in subsection (a) is a Level 6 felony if:

(1) the person has a prior conviction for a drug offense; and

(2) the person possesses:

(A) at least thirty (30) grams of marijuana; or

(B) at least five (5) grams of hash oil, hashish, or salvia.

**(d) It is a defense to a prosecution under this section for an offense involving marijuana, hash oil, or hashish that:**

**(1) the person is:**

**(A) the owner or agent of a dispensing facility as defined under IC 16-19-3-32(a)(4);**

**(B) the owner or agent of an independent testing**



1           laboratory as defined under IC 16-19-3-32(a)(5);  
2           (C) the owner or agent of a manufacturing facility as  
3           defined under IC 16-19-3-32(a)(6);  
4           (D) a medical cannabis agent as defined under  
5           IC 16-19-3-32(a)(7);  
6           (E) the owner or agent of a medical cannabis establishment  
7           as defined under IC 16-19-3-32(a)(8); or  
8           (F) a patient cardholder as defined under  
9           IC 16-19-3-32(a)(13); and  
10          (2) the conduct involving the marijuana, hash oil, or hashish  
11          is authorized by the person's license issued under  
12          IC 16-19-3-32.

